

**DELEGATION OF AUTHORITY
TO ADMINISTER A PART 71 OPERATING PERMITS
PROGRAM**

DELEGATION AGREEMENT

BETWEEN

US ENVIRONMENTAL PROTECTION AGENCY REGION IX

AND

**NAVAJO NATION ENVIRONMENTAL PROTECTION
AGENCY**

WHEREAS, the U.S. Environmental Protection Agency Region IX (“EPA”) administers and enforces a federal operating permits program in the Delegated Program Area (as defined below) pursuant to Title V of the Clean Air Act (“CAA”) as amended (1990), and 40 C.F.R. Part 71 (“Part 71 Program”).

WHEREAS, pursuant to Section 301(d) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7601(d), and 40 C.F.R. § 49.7, the Navajo Nation Environmental Protection Agency (“NNEPA”), on behalf of the Navajo Nation, formally requested in a letter dated June 17, 2004, that EPA find that the Navajo Nation meets the eligibility requirements under CAA Section 301(d) and 40 C.F.R. § 49.6 for treatment in the same manner as a State for Part 71 Program delegation purposes (“TAS Request”).

WHEREAS, in a separate letter dated July 16, 2003, NNEPA also formally requested that EPA, pursuant to 40 C.F.R. § 71.10, delegate authority to NNEPA, as a delegate agency (“Delegation Request”), to administer and enforce the Part 71 Program in certain areas subject to the TAS Request and identified in “Attachment 1” of this agreement (“Delegated Program Area”). The Delegation Request covers all Title V sources in the Delegated Program Area except for the two facilities specified in the sixth whereas clause below.

WHEREAS, EPA, consistent with 40 C.F.R. § 49.9, notified appropriate governmental entities and the public of NNEPA’s TAS Request, and provided 30 days for review and comment on the Navajo Nation’s jurisdictional assertions.

WHEREAS, EPA has reviewed NNEPA’s TAS Request and has determined that the Navajo Nation meets all of the criteria for such treatment as set forth at 40 C.F.R. § 49.6 to administer a delegated Part 71 Program in the Delegated Program Area.

WHEREAS, NNEPA is not currently seeking to administer the delegated Part 71 Program over the Four Corners Power Plant and the Navajo Generating Station, and the administration of the Part 71 Program for these two sources is not being delegated to NNEPA. Accordingly, the references to Part 71 sources in this Delegation Agreement do not include the Four Corners Power Plant and the Navajo Generating Station.

WHEREAS, EPA has determined that the Navajo Nation has enacted laws and promulgated rules that, by their terms, adequately authorize NNEPA to collect sufficient revenue to carry out all duties necessary to administer a delegated Part 71 Program and to engage in the enforcement investigatory activities described in Section VI.1 of this Delegation Agreement.

WHEREAS, EPA has reviewed NNEPA’s request for delegation and the accompanying opinion of the Navajo Nation Attorney General in support of that request and has determined that NNEPA meets all of the criteria for designation as a “delegate agency” set forth at 40 C.F.R. Part 71.

WHEREAS, NNEPA currently intends to submit to EPA on behalf of the Navajo Nation an application for full Part 70 program approval and both agencies agree, as appropriate, to work diligently towards the goal of a fully approved Part 70 program.

WHEREAS, NNEPA and EPA both recognize that the delegation of administration of the Part 71 Program prior to approval of the Part 70 Program application (if a Part 70 Program application is submitted and approved), will help NNEPA develop its Title V program.

WHEREAS, this Agreement may be modified, amended, or revoked in part or in whole by EPA after consultation with NNEPA.

WHEREAS, by entering into this Delegation Agreement, neither NNEPA nor EPA intends to create a document that creates any enforceable rights in third parties who are not signatories to this agreement.

WHEREAS, this Delegation Agreement may be signed by EPA and NNEPA in counterparts.

WHEREAS, NNEPA acknowledges that by operation of the CAA, NNEPA will administer the existing federal operating permit program pursuant to 40 C.F.R. Part 71 effective on October X, 2004 within the Delegated Program Area.

THEREFORE, EPA and NNEPA agree to enter into this Delegation Agreement as follows:

2. EPA will provide technical support and assistance to NNEPA toward the administration of the Part 71 Program and the activities discussed below in Part VI, including the development of appropriate permit conditions, and determining applicability of the federal regulations.
3. NNEPA agrees to require Part 71 permits of all Part 71 sources as defined by 40 C.F.R. § 71.3(a).
4. NNEPA agrees to process all claims of confidentiality relating to information submitted to the Navajo Nation pursuant to the Part 71 Program and protect information submitted under such a claim unless or until a determination is made that the information is not entitled to confidential treatment. NNEPA agrees to obtain concurrence from EPA before releasing information submitted under a claim of confidentiality.
5. This Agreement may be modified, amended, or revoked in part or in whole by EPA after consultation with NNEPA. Any such modification, amendment, or revocation shall be effective as of the date specified in a notice to the NNEPA.

II. PART 71 FEES:

1. NNEPA agrees to collect permit fees from all Part 71 sources in a manner consistent with Subpart VI of the Navajo Nation Operating Permit Regulations. Pursuant to 40 C.F.R. § 71.9(b), such permit fees will be used solely for the purposes of implementing the Part 71 Program, which includes, but is not limited to, the following activities as they relate to the Part 71 Program:
 - a. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
 - b. Processing permit reopening;
 - c. General administration of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;
 - d. Implementing and enforcing the terms of a Part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
 - e. Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

- f. Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under Part 71.
2. Upon the effective date of this Delegation Agreement, EPA hereby waives fees from Part 71 sources located in the Delegated Program Area pursuant to 40 C.F.R. §71.9(c)(2)(ii), in light of EPA's determination that the NNEPA has enacted laws and promulgated rules that, by their terms, adequately authorize NNEPA to collect fee revenue and that such fee revenue will be sufficient to administer the delegated Part 71 Program and conduct the activities discussed below in Part VI.
3. EPA retains its right to collect fees from all owners or operators of Part 71 sources if EPA makes a later determination that NNEPA is not collecting fees sufficient to fund an adequate delegated Part 71 Program or if EPA withdraws NNEPA's status as a delegate agency authorized to administer the Part 71 Program.
4. Upon the effective date of this Delegation Agreement, notwithstanding the fee payment provisions of the current Part 71 permits, NNEPA shall begin collecting fees from all Part 71 sources in the Delegated Program Area pursuant to Subpart VI of the Navajo Nation Operating Permit Regulations.

III. PART 71 APPLICATIONS:

1. EPA has provided the NNEPA with a comprehensive list of those sources that have already received a Title V operating permit from EPA Region IX and of those sources that have not yet received a Part 71 permit and will (or may) require a Part 71 permit. NNEPA agrees to provide an updated list annually to EPA Region IX of sources that may require Part 71 permits during the course of NNEPA's administration of the Part 71 Program.
2. EPA agrees to send to NNEPA, by September 1, 2004, copies of all Part 71 applications for sources in the Delegated Program Area for which initial Part 71 permits have not yet been issued.
3. NNEPA agrees to review and make a determination of completeness for each new Part 71 permit application within 60 days of receipt. NNEPA agrees to promptly inform the applicant and EPA of the results of each application completeness review.
4. NNEPA agrees to submit to EPA on a semi-annual basis a list of all permit applications NNEPA intends to process. The initial list will be due to EPA on April 15, 2005 for the period of May 1, 2005 through October 31, 2005. Subsequent lists shall be provided on the 15th day of the month prior to the start of the relevant six-month period.

5. NNEPA agrees to provide adequate notice to the public through appropriate means upon receipt of a new application for a Part 71 permit, revision or renewal.

IV. PERMIT DEVELOPMENT AND REVIEW:

1. NNEPA agrees to draft each Part 71 permit to include all permit elements cited under 40 C.F.R. § 71.6 and all CAM requirements under 40 C.F.R. Part 64. NNEPA agrees to draft the permit, with guidance from EPA where appropriate, to ensure that all Part 71 requirements are incorporated into the permit. NNEPA shall provide EPA an opportunity to review a copy of the draft permit prior to the beginning of the public comment period. NNEPA also agrees to prepare a technical review memorandum and statement of legal and factual basis for each Part 71 permit in accordance with 40 C.F.R. § 71.11(b). Although not a requirement of the Delegation Agreement and not part of the administration of the federal Part 71 program, NNEPA intends to supplement the requirements in § 71.11(b) with the requirements in the Navajo Nation Operating Permit Regulation § 401(B).
2. NNEPA agrees to conduct all administrative permit proceedings in accordance with 40 C.F.R. § 71.11, including but not limited to the public notification for permit issuance with a 30-day comment period, availability of permit information, and opportunity for a public hearing. NNEPA agrees to provide EPA with notice of all permit comment periods in advance of the initiation of the 30-day public comment period. Although not a requirement of the Delegation Agreement and not part of the administration of the federal Part 71 program, NNEPA intends to supplement the requirements in § 71.11 concerning administrative permit proceedings with the requirements in the Navajo Nation Operating Permit Regulation.
3. NNEPA agrees to prepare a proposed permit that incorporates all necessary changes, including any changes that result from EPA comments and the public comment period. NNEPA agrees to submit to EPA a copy of the proposed permit along with NNEPA's responses to all comments received on the draft permit and all necessary supporting information (40 C.F.R. § 71.11(j)). EPA shall have 45 days from its receipt of the permit to review and object to the proposed permit in accordance with the procedures set forth at 40 C.F.R. § 71.10(g).
4. EPA will review proposed permits to ensure that they comply with all requirements of the Act, the regulations promulgated thereunder, and any other applicable laws and regulations. EPA intends to use its review authority to ascertain whether each proposed permit contains all information required by 40 C.F.R. § 71.6.
5. NNEPA agrees to follow its transition plan for permit issuance, provided for in Attachment "2" of this agreement.
6. EPA shall object to the issuance of any proposed permit determined not to be in compliance with Part 71, the Act or any other applicable requirement. NNEPA shall not issue a permit if

the Regional Administrator objects in writing within 45 days of receipt of the proposed permit and all necessary supporting information. Any EPA objections shall include a statement of the reasons for objection and a description of the terms and conditions that the permit must include to respond to the objection. EPA shall provide a copy of the objection to the permit applicant. (40 C.F.R. § 71.10(g)(1) and (2)).

7. EPA shall object to a Part 71 permit if NNEPA fails to do any of the following:
 - a. submit a copy of each permit application upon EPA request, each proposed permit, and each final permit;
 - b. submit any information necessary to adequately review the proposed permit;
 - c. process the permit under the procedures required under 40 C.F.R. § 71.7 and 71.11; or
 - d. comply with the requirements of 40 C.F.R. § 71.8(a).(40 C.F.R. § 71.10(g)).
8. NNEPA agrees, within 90 days after the date of an objection, to revise and submit to EPA a proposed permit in response to the objection. If NNEPA fails to do so, EPA shall issue or deny the permit in accordance with the requirements of Part 71. (40 C.F.R. § 71.10(g)(3)).
9. EPA shall receive and act upon all petitions from any interested person to reopen a permit for cause in accordance with 40 C.F.R. § 71.11(n). (40 C.F.R. §§ 71.10(h) and (j)(2)).
10. EPA may reopen any permit if it finds that cause exists to terminate, modify, or revoke and reissue a permit. EPA intends to follow all procedures found in 40 C.F.R. § 71.7. (40 C.F.R. § 71.7(g)).
11. EPA is not delegating its authority to object to the issuance of a Part 71 permit nor its authority to act upon petitions submitted by the public. (40 C.F.R. § 71.10(j)).
12. NNEPA agrees, upon satisfactory completion of all administrative procedures, to issue all final Part 71 permits under signature authority of the Executive Director of the Navajo Nation Environmental Protection Agency or his/her designee.

V. PART 71 PERMIT REVISIONS AND RENEWALS:

1. NNEPA agrees to continue to administer permits issued under the Part 71 Program and conduct the activities discussed below in Part VI until all Part 71 permits are replaced with Part 70 permits issued pursuant to an approved Part 70 Program. All Part 71 permits that must be renewed while the Part 71 Program is effective will be renewed following the procedures of the Delegation Agreement, Part 71 and the Act. (40 C.F.R. § 71.4(k)).
2. NNEPA agrees to revise, reopen, terminate or revoke and reissue Part 71 permits, as necessary and appropriate, using the procedures of the Delegation Agreement, Part 71 and the Act. (40 C.F.R. § 71.4(k)).

3. As soon as practicable, but no later than six months after this delegation becomes effective, using the appropriate procedures for reopenings or revisions contained in Part 71, NNEPA shall revise all EPA-issued Part 71 permits to reflect the change in permitting authority. These changes include, but are not limited to, changes in annual fee submittals and changes to reporting requirements.
4. Although not a requirement of this Delegation Agreement and not part of the administration of the federal Part 71 program, NNEPA intends to supplement the requirements in Part 71 with the requirements in the Navajo Nation Operating Permit Regulations.

VI. ENFORCEMENT:

1. While this Delegation Agreement is in effect, NNEPA agrees to conduct the following activities with respect to Part 71 sources:
 - a. development of compliance plans and schedules of compliance;
 - b. compliance and monitoring activities, including review of monitoring reports and compliance certifications, inspections, audits, conducting and/or reviewing stack tests, and issuance of requests for information either before or after a violation is identified; and
 - c. enforcement-related activities, including issuance of notices, findings, and letters of violation and development of cases up until the filing of a complaint or order.
2. Administrative and judicial enforcement actions by NNEPA are not covered by this Delegation Agreement. This Agreement does not preclude NNEPA from pursuing administrative and judicial enforcement actions under its independent authorities. Where NNEPA pursues such actions, NNEPA shall provide notice to EPA following the procedures specified in Part VI(7).
3. EPA maintains its full federal investigative and enforcement authorities available under the Act, including those specified in 40 C.F.R. §71.12.
4. EPA intends to provide training and guidance to the NNEPA staff in order to develop NNEPA's enforcement program.
5. EPA intends to inspect and conduct comprehensive compliance investigations in conjunction with NNEPA of Part 71 facilities located in the Delegated Program Area; such inspections and investigations shall be performed consistent with EPA's Part 71 Compliance Monitoring Strategy policy.

6. Action taken by NNEPA under this Delegation Agreement shall in no way preclude EPA from enforcing any provision or requirement of Part 71 or the Clean Air Act.
7. NNEPA, upon becoming aware of possible civil violations or criminal activity regarding compliance with the Part 71 Program, shall notify and provide evidentiary documentation to the following EPA offices of such activity as soon as possible, but in all instances no later than 30 days after discovery of the activity. For civil violations, NNEPA shall provide notification and documentation to the Region IX Air Division, Enforcement Branch. For criminal activity, NNEPA shall provide notification and documentation to the EPA Criminal Investigation Division (CID).

VII. SUBMITTAL OF INFORMATION:

1. Permit Issuance:

- a. NNEPA agrees to submit permit information to EPA initially by electronic mail, followed by a signed copy of the original document.
- b. NNEPA shall submit to EPA a list of all permits to be processed semi-annually, as described in section III.4 of this agreement. The first list shall be submitted by April 15, 2005.
- c. The permit application and completeness determination for each permit, permit revision, or permit renewal shall be submitted to EPA once NNEPA has made a completeness determination.
- d. The draft permit for each initial permit, permit revision, or permit renewal will be submitted to EPA before it is made available for public comment. A copy of the technical review memorandum or statement of legal and factual basis and all necessary supporting information will also be submitted. A copy of the public notice shall be submitted to EPA when published.
- e. NNEPA agrees to submit to EPA any public comments that were received on the draft permit, permit revision, or permit renewal and a summary of how the draft initial permit, permit revision, or permit renewal was changed to respond to comments.
- f. The proposed permit, permit revision, or permit renewal resulting from consideration of public comments and the comments of affected States on the draft will be submitted to EPA after the end of the 30-day public comment period. Upon receipt of the proposed permit and all necessary supporting documentation, EPA will start its 45-day review period.
- g. The final permit, permit revision, or permit renewal will be submitted to EPA upon issuance.
- h. NNEPA expects to post on its website a list that identifies each draft and final Part 71 permit. The list will identify the permit, the public comment period, and the locations where the public may obtain a copy of the permit.

2. Permit Reporting:

In regards to reporting requirements, all Part 71 permits, including those issued pursuant to Section V.3 of this Delegation Agreement, shall require that all Part 71 sources submit all reports, compliance certifications, and other submittals required by Part 71 and the Part 71 permits to both EPA and NNEPA.

3. Fee Auditing:

NNEPA agrees to submit a certified annual report that accounts for all Title V fees collected that fiscal year, all Title V expenditures and all Title V funds carried over from the previous fiscal year. The initial report will be due to EPA on September 1, 2005 and will account for the period beginning on the effective date of this agreement through December 31, 2004. Subsequent reports shall be provided on April 1 of each year and will account for the preceding calendar year.

4. Data Management: NNEPA agrees to input into AIRS on at least a monthly basis all data pertaining to each permit including name, AFS plant identification number, permit number assigned, new permit or modification, and final permit issuance date.
5. Retention of Records: NNEPA shall keep each draft, proposed, and final permit and application for permit renewal or modification for at least five years.

VIII. PART 71 IMPLEMENTATION ASSESSMENT:

1. EPA intends to assess NNEPA's administration of the Part 71 Program on an ongoing basis for consistency with the Delegation Agreement, Part 71, and the Act.
 - a. EPA intends to consider any written comments from regulated parties, the public or any federal, state, tribal or local agency regarding the implementation of Part 71 in the Delegated Program Area. EPA intends to promptly provide copies of such documents to NNEPA.
 - b. EPA intends to assess the Part 71 Program by examining NNEPA files and documents for selected facilities to determine whether permits are processed, issued, reopened, revised, renewed, and enforced in a manner consistent with this Delegation Agreement, Part 71, and the Act.
2. EPA intends to assess NNEPA's Part 71 fee administration to ensure that sufficient fees are being collected to adequately administer the Part 71 Program and conduct activities as described above in Part VI, and to ensure that all Part 71 fees are being expended appropriately.
3. If EPA determines that NNEPA is not adequately administering the program or conducting activities as described above in Part VI, EPA will notify NNEPA of that determination as

XI. SIGNATURES

Kevin Taka —

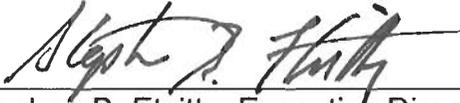
Date: 10-13-04

Wayne Nasti

WV Regional Administrator

U.S. Environmental Protection Agency - Region IX

XI. SIGNATURES



Stephen B. Etsitty, Executive Director
Navajo Nation Environmental Protection Agency

Date: OCT 15 2004



Joe Shirley, Jr., President
Navajo Nation

Date: OCT 15 2004

Attachment 1
EPA's Approval of NNEPA's TAS Application
to Administer a Delegated Part 71 Program



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

OFFICE OF THE
REGIONAL ADMINISTRATOR

ELIGIBILITY DETERMINATION FOR THE NAVAJO NATION FOR TREATMENT IN THE
SAME MANNER AS A STATE FOR PURPOSES OF DELEGATION OF
ADMINISTRATION OF THE CLEAN AIR ACT TITLE V, 40 CFR PART 71 PROGRAM

The Office of Regional Counsel ("ORC") and the Air Division have reviewed the Navajo Nation's eligibility for treatment in the same manner as a state ("TAS") under Clean Air Act ("CAA") section 301(d) and 40 C.F.R. Part 49 in order to be delegated administration of the CAA federal Title V operating permit program ("Part 71 Program"), and have recommended a finding of eligibility. Based on this review and recommendation, I have determined that the Navajo Nation has met the requirements of 40 C.F.R. § 49.6 for the purpose of entering into a delegation agreement with EPA to administer the federal Part 71 Program.

Eligibility Requirements

The requirements for the eligibility determination are identified in the Tribal Authority Rule ("TAR") at 40 CFR § 49.6. The TAR allows that, where tribes have previously received authorization for a CAA program or for any other EPA-administered program, they need only identify the prior authorization(s) and provide required information which had not been submitted with the prior application(s) (40 C.F.R. § 49.7(a)(8)). The Navajo Nation has previously applied and received approval for TAS for several EPA programs, including the CAA § 105 grant program, the Public Water Systems ("PWS") Supervision Program, and the Clean Water Act Section 106 grant program. The TAS requirements set forth in the TAR are as follows:

a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

The Navajo Nation fulfilled this requirement by referencing its Clean Water Act Treatment as State application under Section 106, which was approved June 30, 1993. Our review of that application and EPA's approval thereof showed that the required information was submitted and that the Navajo Nation is an Indian tribe recognized by the Secretary of the Interior. See also 67 Fed. Reg. 46328 (July 12, 2002). The Navajo Nation meets the requirement of 40 C.F.R. § 49.6(a).

b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

The Navajo Nation fulfilled this requirement by referencing its Clean Water Act Treatment as State application, which was approved June 30, 1993. Our review of that application and EPA's approval thereof showed that the required information was submitted and that the Navajo Nation has a governing body carrying out substantial governmental duties and functions. The application describes the Navajo Nation's tripartite government, with executive, legislative and judicial branches, performing many essential governmental functions, including the use of its police powers to protect the health, safety and welfare of the Navajo people. The Navajo Nation government has enacted significant legislation, including the Navajo Nation Air Pollution Prevention and Control Act. The Navajo Nation meets the requirement of 40 C.F.R. § 49.6(b).

c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

The Navajo Nation has met this requirement. The Tribe has provided maps and legal descriptions for the formal Navajo Indian Reservation, established by the Treaty of June 1, 1868, and expanded by subsequent acts of Congress and executive orders that enlarged the Navajo Indian Reservation.¹ The Tribe has also provided maps and legal descriptions for the "satellite" reservations of Alamo, Canonicito and Ramah and for Tribal trust lands located outside of the formal reservations in the Eastern Agency. The Tribe is proposing to administer the program for Part 71 sources located within the formal reservations and the Tribal trust lands located in the Eastern Agency outside of the formal reservations.²

Because of ongoing litigation with the Hopi Tribe, the Navajo Nation is not at this time including any air resources within the former Bennett Freeze Area in its request for eligibility determination. Therefore, EPA makes no determination with respect to the Navajo Nation's eligibility to administer the Part 71 Program in the Bennett Freeze Area.

The Tribe is also not currently requesting that EPA make any determination regarding the Tribe's eligibility to administer the Part 71 Program over two coal-fired generating stations located on the Reservation, the Four Corners Power Plant and the Navajo Generating Station. As the Tribe is not proposing to assume administration of the Part 71 permitting program over these

¹ Copies of the Treaty and the acts of Congress and executive orders were attached as exhibits to the Tribe's CWA Section 106 Application and are relied upon here.

² Under the CAA and the TAR, EPA treats tribal trust lands validly set apart for the use of an Indian tribe as reservation land even though that land has not been formally designated as a reservation. For the purposes of this document, EPA refers to the formal reservations and the Tribal trust lands located in the Eastern Agency outside of the formal reservations as the "Reservation."

facilities, EPA makes no determination with respect to the Tribe's eligibility to administer the program over the two power plants.

EPA notes that the federal Part 71 Program will continue to be implemented under federal authority throughout the areas described and applied for by the Tribe until such time as EPA approves a CAA permitting program under 40 C.F.R. Part 70 for such areas. Consistent with this eligibility determination, EPA and the Tribe may enter into a delegation agreement pursuant to which the Tribe would administer the federal program over the areas covered by this eligibility determination on behalf of EPA. The Navajo Nation has enacted laws providing all relevant authorities to enable the Tribe to carry out administration of the federal program. The Tribe has a permitting office within the Navajo Nation Environmental Protection Agency that is duly authorized under Tribal law to issue federal Part 71 permits pursuant to a delegation agreement with EPA. In addition, as described in greater detail below under Section (d), the Tribe has enacted the Navajo Nation Air Pollution Prevention and Control Act and the Navajo Nation Air Quality Control Operating Permit Regulations; they contain all relevant authorities and procedures for administration of the federal program. In particular, the Tribal statute and regulations establish administrative authorities and procedures for the receipt, processing, and issuance or denial of permit applications, the collection of permitting fees, and the pursuit of various enforcement-related activities including development of compliance plans and schedules of compliance, monitoring, inspections, audits, requests for information, issuance of notices, findings and letters of violation, and development of cases up until filing of a complaint or order.

-----The Navajo Nation has demonstrated that the functions it will exercise in administering the federal Part 71 Program pertain to the management and protection of air resources within the exterior boundaries of the Reservation. The Tribe meets the requirement of 40 C.F.R. § 49.6(c).

d) the Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

The functions to be exercised, in this case, pertain to the administration of the federal Part 71 Program. The Navajo Nation has been working closely with EPA Region 9 to develop its air program capacity since 1987. The Tribe adopted the Navajo Nation Air Pollution Prevention and Control Act, 4 NNC §§ 1101-1162 (amended April 22, 2004 and signed into law May 7, 2004), ("Navajo Nation CAA") in 1995, and has been working on compliance issues with stationary sources on the Reservation for many years. Furthermore, the Navajo Nation has adopted its own air permitting regulations, which the Tribe expects will be the basis for their future application for approval of a Part 70 program. The Air Division has also reviewed the Tribe's staff and administrative capability, and found that the Tribe is reasonably expected to be capable of administering a delegated Part 71 Program. The Navajo Nation EPA has a staff of 67 people working on a variety of environmental programs. The staff includes scientists, inspectors, engineers, and legal counsel. The Navajo Nation has received primacy for the Public Water Systems component of the Safe Drinking Water Act and has applied for primacy for the Underground Injection Control Program as well. Navajo Air Program staff have worked on a

variety of air issues involving the major sources on the Reservation, and they have participated in training and internships with EPA and the Arizona Department of Environmental Quality.

Where EPA is granting a full delegation of administration of the Part 71 program and suspending its collection of federal Part 71 fees, EPA also requires that the Tribe demonstrate it has the ability to collect permit fees and to conduct activities covered by Title V fees, including the enforcement activities referenced in 40 C.F.R. § 71.9(b), which include functions such as inspections, audits and stack tests.³ The Navajo Nation has developed its permitting laws and regulations to include all relevant requirements to collect fees and conduct the enforcement activities covered by Title V fees, as well as other aspects of the Part 71 program. The Tribe enacted the Navajo Nation CAA as one of its first steps in developing a Navajo Nation Air Quality Program to regulate air quality throughout the Navajo Nation.

Since the passage of the Navajo Nation CAA, the Navajo Air Quality Program has been conducting air quality monitoring and inspections, has completed an air emissions inventory, and has developed operating permit and acid rain permit regulations that the Tribe intends to submit for approval under Parts 70 and 72, respectively, 4 NNR §§ 11-2H-101 through 11-2H-795. It is a violation of the Navajo Nation CAA and the Navajo Nation Air Quality Control Operating Permit Regulations (“Navajo Nation AQCOPR”) to violate a federal Part 71 permit. 4 NNC § 1154; 4 NNR § 11-2H-501(A). With respect to permit fees, the Navajo Nation CAA and the Navajo Nation AQCOPR include explicit provisions regarding permit fees and the collection of fees. 4 NNC § 1134(B); 4 NNR §§ 11-2H-601 through 11-2H-603. The Navajo Nation CAA also includes explicit provisions authorizing the Tribe to conduct the enforcement activities covered by Title V fees such as issuing information requests, conducting inspections and audits, and requiring sources to conduct emissions monitoring. See 4 NNC §§ 1103(B) (Administration; Authority of Director), 1151 (Record-keeping, Entry, Monitoring and Inspections), 1152 (Orders to Comply), and 1161(B) (Rulemaking and Other Administrative Procedures; Administrative subpoenas). The Navajo Nation CAA and the Navajo Nation AQCOPR were passed after a public notice and comment period, and there were no adverse comments to these provisions or objections to the Navajo Nation’s authority to collect fees. The Navajo Nation has also collected fees from both members and non-members of the Tribe for other environmental programs, including the Navajo Underground Injection Control program. Additionally, all of the facilities subject to the federal Part 71 Program that the Tribe will administer operate pursuant to consensual relationships (leases) with the Tribe.

The Navajo Nation has demonstrated that it is reasonably expected to be capable of carrying out the functions to be exercised in administering the federal Part 71 Program in a manner consistent with the terms and purposes of the CAA and all applicable implementing regulations. The Tribe meets the requirement of 40 C.F.R. § 49.6(d).

³CAA section 502(b)(3)(a)(ii) specifies that the permit fees collected may be used for “implementing and enforcing the terms and conditions of permits (not including any court costs or other costs associated with any enforcement action).”

Notification of "Appropriate Governmental Entities"

40 C.F.R. § 49.9(b) provides that the Regional Administrator shall notify appropriate governmental entities within 30 days of receipt of the Tribe's initial, complete application under the CAA. There are twelve appropriate governmental entities:

- the Hopi Tribe;
- the Jicarilla Apache Tribe;
- the Pueblo of Laguna;
- the Ute Mountain Ute Tribe;
- the Pueblo of Zuni;
- the States of Utah, Arizona, Colorado and New Mexico;
- the U.S. National Park Service;
- the U.S. Forest Service; and
- the U.S. Bureau of Land Management.

Consistent with 40 C.F.R. § 49.9(b), within 30 days of EPA's receipt of the Tribe's complete application, these entities were provided with notice and a 30-day opportunity to comment. In addition, public notice with an opportunity for public comment was provided in the form of an advertisement in the Navajo Times.

Comments were received from the New Mexico Environment Department and the Arizona Department of Environmental Quality, in both cases consisting of letters of support for the Tribe's application.

Determination

Based on the information provided to me by the Navajo Nation, the Air Division, and the Office of Regional Counsel, I have determined that the Navajo Nation is eligible for TAS for the purpose of entering into a delegation agreement with EPA for the purpose of administering the federal Part 71 Program.

Date: 10-13-04


Wayne Nastri, Regional Administrator

Attachment 2
NNEPA's Transition Plan for Permit Issuance

NAVAJO NATION ENVIRONMENTAL PROTECTION AGENCY
Navajo Air Quality Program

**PROGRAM DESCRIPTION
AND TRANSITION PLAN
FOR
A DELEGATED PART 71 PROGRAM**

July 16, 2004

Table of Contents

- I. Introduction** -1-
- II. Organization of the NNEPA** -1-
- III. Navajo Nation Laws** -2-
- IV. Navajo Air Quality Control Program** -2-
 - A. Funding -2-
 - B. Purpose of Program -2-
 - C. Staffing -3-
 - 1. Administration Section -3-
 - 2. Regulation Development Section -3-
 - 3. Compliance Section -4-
 - 4. Air Monitoring Section -4-
- V. Implementation of Operating Permit Program** -4-
 - A. Introduction -4-
 - B. Transition From an EPA Part 71 Program to a Navajo Delegated Part 71 Program
..... -5-
 - C. Permit Applications -6-
 - D. Permit Development and Review -7-
 - E. Permit Issuance Process -7-
 - F. Permit Fees -8-
 - G. Enforcement -9-
 - H. Current/Future Operating Expenses -10-
 - I. Permit Program Staff and Responsibilities -10-
 - 1. Environmental Department Manager -10-
 - 2. Environmental Program Supervisor -10-
 - 3. Environmental Engineer -11-
 - 4. Environmental Specialist -11-
 - 5. Information Technician -11-
 - 6. Office Specialist -11-
- VI. Recruitment and Hiring of Permit Program Staff** -11-
 - A. Create Staff Positions for Permit Program -11-
 - 1. Establish positions for the permit program -12-
 - 2. Recruitment -12-
 - B. Selection of Staff -12-

VII. Orientation and Training	-12-
A. New Staff	-12-
B. Training	-12-

Program Description for a Navajo Delegated Part 71 Program

I. Introduction

This document describes how the Navajo Nation Environmental Protection Agency (“Navajo Nation EPA” or “NNEPA”), through the Navajo Nation Air Quality Control Program (“NAQCP”), intends to administer and enforce a delegated Clean Air Act (“CAA”) Title V Operating Permit Program consistent with the requirements of 40 C.F.R Part 71 and Navajo Nation law. The program description includes an overview of the Navajo delegated Part 71 operating permit program and a discussion of how the program and its implementation will be in accordance with federal requirements.

II. Organization of the NNEPA

In 1995, the Navajo Nation EPA was established as a separate regulatory agency within the executive branch of the Navajo Nation government, in order to ensure independence in the implementation and enforcement of environmental laws within the Navajo Nation for the protection of human health and the environment. The Resources Committee of the Navajo Nation Council provides legislative oversight of NNEPA. An Executive Director, appointed by the President of the Navajo Nation, administers the agency. The Executive Director (referred to as the “Director” in the Navajo Nation environmental laws) has rulemaking, regulatory, and enforcement authority, which he or she may delegate to the various NNEPA departments and programs as appropriate.

The NNEPA is organized into four departments: The Air & Toxics Department, the Waste Regulatory and Compliance Department, the Surface and Ground Water Protection Department and the Enforcement Department. Each department is administered by an Environmental Department Director who oversees departmental functions.

The Air & Toxics Department comprises four programs, the Air Quality Control Program, the Pesticides Program, the Radon Program, and the Asbestos Program. The Air Quality Control Program is headed by an Environmental Program Supervisor and employs additional staff to conduct ambient air monitoring and compliance inspections, assist in enforcement actions, and undertake program development and general office activities.

<p>NNEPA</p> <ul style="list-style-type: none">● Air & Toxics● Waste Regulatory & Compliance● Surface & Ground Water Protection● Enforcement	<p>Air & Toxics Department</p> <ul style="list-style-type: none">● Asbestos Program● NAQCP● Pesticides Program● Radon Program
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III. Navajo Nation Laws

The following laws provide the NNEPA in general and the NAQCP in particular with the authority to regulate air quality within Navajo Nation lands:

Table 1. Relevant Navajo Nation Acts and Regulations

Acts / Regulations	Date Passed	Date Amended
Navajo Nation Environmental Policy Act	April 21, 1995	
Navajo Nation Air Pollution Control and Prevention Act	July 20, 1995	April 22, 2004
Navajo Nation Operating Permit Rule	April 13, 2000	July 8, 2004
Plan of Operation	May 22, 2001	
Navajo Nation Uniform Regulations	Sept. 5, 2001	
Navajo Nation Acid Deposition Control Regulations	July 8, 2004	

Copies of those acts and regulations pertaining to the delegated Part 71 program are provided as separate attachments to this application.

IV. Navajo Air Quality Control Program

A. Funding

The Navajo Air Quality Control Program was created in April 1992, beginning its operation under a Section 103 Air Grant awarded from EPA Region 9. The Program then submitted an application and received approval for a Section 105 Grant in 1999. The Program continues to operate under this Grant.

B. Purpose of Program

The Program is organized into four sections: Administration, Regulation Development, Compliance, and Air Monitoring. Though the primary goal of the Program is to obtain EPA approval of and to implement a CAA Title V operating permit program, and this task is currently assigned to the Regulation Development Section, the tasks and responsibilities of the other Program sections will also support the Title V program.

The Administration Section is responsible for administrative, personnel and finance matters related to the operation of the Program, such as taking personnel actions, handling time sheets, assisting in the hiring of personnel, preparing and maintaining budgets, and submitting

reports.

The Regulation Development Section has completed the rulemaking process for the Navajo Nation Acid Rain Rule, the revised Navajo Nation Operating Permit Rule, and the revised Navajo Nation Clean Air Act. In addition, the Section completed the “treatment as a state” application that has already been submitted to EPA as part of the Navajo Nation’s application to administer a delegated Part 71 program. The Regulation Development Section also has finalized the delegation application that is currently being submitted to EPA. This Section also will be responsible for completing and submitting the Part 70 application to EPA.

The Compliance Section conducts inspections of all Title V and non-Title V sources located within the Navajo Nation, such as power plants, coal mines, and oil and gas facilities. In addition, this Section responds to citizen complaints, and is also updating the air emissions inventory for the tribe.

The Air Monitoring Section is responsible for maintaining the operation of and collecting data from four air monitoring stations located within the Navajo Nation. Work on two additional air monitoring sites is nearly completed and these stations are expected to begin operating soon.

C. Staffing

~~~~~ The following briefly describes the functions and responsibilities of the current staff:

#### 1. Administration Section

Chris Lee, Program Supervisor

- a. Responsible for all personnel and administrative matters of the Program.
- b. Provides support and assistance to Regulation Development Section.
- c. Serves in Acting capacity for the Air & Toxics Department Director, as needed.
- d. Participates in regional air quality issues, e.g., the WRAP.
- e. Completes and submits Program reports.

Marjorie Nelson, Sr. Office Specialist

- a. Provides secretarial and clerical support.
- b. Assists the Supervisor in personnel and administrative matters of the Program.

#### 2. Regulation Development Section

Wilson Laughter, Sr. Environmental Specialist

- a. Works on tasks necessary for NAQCP to assume a delegated Part 71 permit program, approved Part 70 Permit Program, rulemaking activities for existing laws as well as proposed legislation(s).

3. Compliance Section

Iris Begaye, Sr. Environmental Specialist

- a. Conduct inspections individually or jointly with other entities of all title V and non-title V sources on Navajo lands, including providing assistance on enforcement cases.
- b. Responds to citizen complaints.
- c. Maintains and updates Emissions Inventory databases.

4. Air Monitoring Section

Charlene Nelson, Sr. Environmental Specialist

- a. Develops and revises QAPP as needed.
- b. Works closely with Environmental Technician in the operation of the air monitoring network.
- c. Serves in Acting capacity for the Program Supervisor, as needed.

Roderick Yazzie, Environmental Technician

- a. Maintains and operates the Navajo air monitoring network.
- b. Responsible for requisition of parts and supplies.
- c. Constructs new air monitoring sites.

## **V. Implementation of Operating Permit Program**

### **A. Introduction**

The NAQCP proposes to establish and maintain a Title V operating permitting program that will encompass both new sources and existing sources. The NAQCP plans to achieve this goal in two steps. First, the Program will administer a delegated Part 71 permit program. Second, during the delegation period, the NAQCP will be working toward submitting an application for USEPA approval of a Navajo Part 70 Operating Permit Program within 12 months after receiving delegation to administer a Part 71 permit program. The NAQCP anticipates developing the necessary resources and expertise during the delegation period to allow for a smoother transition to a Navajo Part 70 Operating Permit Program. The necessary laws (as outlined in Table 1) are already in place authorizing the NNEPA Director, through the NAQCP, both to administer a Navajo delegated Part 71 Permit Program and to implement a Navajo Part 70 Operating Permit Program.

The NAQCP proposes to delay developing and implementing a minor source permit program until after the NAQCP has received approval from the USEPA to implement a Part 70 program (the NAQCP may develop this program earlier if it determines it has sufficient personnel and resources). Once the NAQCP has established a minor source permit program, all

affected sources will be required to receive a minor source air permit in accordance with the Navajo Clean Air Act (and Navajo Minor Source Rule that has yet to be developed).

**B. Transition From an EPA Part 71 Program to a Navajo Delegated Part 71 Program**

USEPA has issued Part 71 permits to 12 of the 14 sources within Navajo Indian country and intends to issue the remaining two permits by September 1, 2004. In the event the two remaining permits are not issued by September 1, 2004, the NNEPA will work in conjunction with Region IX to issue these remaining permits in a timely manner. The NAQCP is seeking to administer a delegated Part 71 program for 12 of these sources, which are listed in Table 2.<sup>1</sup> This program will be a fully delegated program under 40 C.F.R. § 71.10 with respect to those 12 sources.

Within three months of the delegation the NNEPA will administratively amend the permits for these 12 existing Part 71 sources to reflect the change in permitting authority and to revise the appropriate addresses for purposes of reporting and fee payment. USEPA will retain its permit review authority, enforcement authority and other authorities as described further in the Delegation Agreement. The permits will otherwise remain unchanged. The NAQCP will process these permit modifications, as discussed further below.

Listed in Table 2 are the existing sources that will be subject to the delegated Part 71 permit program. This table also includes the amount each source is likely to pay in fees in FY2005 (based on projected emissions) and the annual payment date for each source:

**Table 2.** Part 71 fees for sources for which NNEPA is seeking Part 71 delegation

| <b>Facility Name</b>                     | <b>Projected Fee amount for FY05</b> | <b>Anniversary Date of Payment</b> |
|------------------------------------------|--------------------------------------|------------------------------------|
| El Paso Natural Gas– Leupp Station       | \$97,641                             | Sept. 1                            |
| El Paso Natural Gas– Dilkon Station      | \$ 4,364                             | Sept. 1                            |
| El Paso Natural Gas– Navajo Station      | \$18,237                             | Sept. 1                            |
| El Paso Natural Gas– Window Rock Station | \$80,941                             | April 1                            |
| El Paso Natural Gas– Gallup Station      | \$30,082                             | April 1                            |
| El Paso Natural Gas– White Rock Station  | \$ 8,801                             | April 1                            |
| Peabody Western Coal Company             | \$87,974.73                          | Sept. 1                            |

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<sup>1</sup> The NAQCP is not including the Four Corners Power Plant or Navajo Generating Station in its delegation application at this time, for the reasons discussed in the Navajo Nation’s eligibility application submitted pursuant to 40 C.F.R. § 49.6 and 49.7 and in the jurisdictional statement that is a part of that application. The Navajo Nation may supplement its delegation application in the future to include the two power plants, depending upon the status of negotiations with the power plants.

|                                            |                     |         |
|--------------------------------------------|---------------------|---------|
| Transwestern Pipeline Co. Leupp Station    | \$33,281.75         | Sept. 1 |
| Transwestern Pipeline Co. Klagatoh Station | \$35,930.35         | Sept. 1 |
| ConocoPhillips Wingate Fractionating Plant | \$ 1,755.26         | Sept. 1 |
| Chevron Texaco Aneth Unit                  | \$14,708            | April 1 |
| ExxonMobil McElmo Creek Unit               | \$ 6,123.46         | April 1 |
| <b>Total Annual Revenue:</b>               | <b>\$419,839.55</b> |         |

The following sections discuss how the NAQCP will carry out its specific responsibilities in administering a delegated Part 71 program.

### C. Permit Applications

Pursuant to the Delegation Agreement, USEPA will provide NNEPA with a list of all sources that have already received Part 71 permits from the USEPA and of all sources, if any, that have not yet received a Part 71 permit and will require one. USEPA also will provide NNEPA with copies of all applications for sources within the Navajo Nation, if any, that have not yet received a Part 71 permit.

If there are any Part 71 sources that have not received a Part 71 permit, or if there are new Part 71 sources during the period that NNEPA is administering the delegated program, NNEPA will review and make a determination of completeness for each new Part 71 permit application within 60 days of receipt. NNEPA will provide public notice of receipt of a new application for a Part 71 permit, revision or renewal.

The Navajo Air Quality Control Program will process permit applications pursuant to the procedures described in 40 C.F.R. § 71.5, subpart IV of the NNOPR and the Delegation Agreement. NNEPA will submit to the USEPA, beginning on April 15, 2005 (assuming that NNEPA receives delegation by September 1, 2004), a list of all permit applications that NNEPA intends to process on a semiannual basis. If the permit application is complete and accurate and NAQCP staff decides that a permit may be issued under the regulations, a draft permit will be prepared and the public will be notified that the NAQCP is proposing to issue a permit. NNEPA also will promptly inform the applicant and USEPA of the results of each application completeness review.

Pursuant to 40 C.F.R § 71.5, the following information will be required in an application: source identification information and exact location by latitude and longitude (or UTM), a description of the processes and products (by SIC) including any alternate operating scenario, emission rates and supporting information, a description of all equipment including pollution controls, a list of insignificant activities identifying emission unit and how the exemption applies, supporting information, citation and description of all applicable requirements and exemptions, a description of test methods, a compliance plan, a compliance certification, and a certification of truth, accuracy and completeness.

D. Permit Development and Review

Every permit issued will contain the items specified in 40 C.F.R. § 71.6 and all CAM requirements under 40 C.F.R. Part 64. NNEPA will draft the permit in consultation with USEPA to ensure that all Part 71 requirements are incorporated into the permit. This consultation will include an opportunity for USEPA to review a copy of the draft permit prior to the beginning of the public comment period. NNEPA also will prepare a technical review memorandum and statement of legal and factual basis for each Part 71 permit in accordance with 40 C.F.R. § 71.11(b) and Navajo Nation Operating Permit Regulation § 401(B). NNEPA will provide public notice and comment regarding permit actions and conduct permit proceedings pursuant to 40 C.F.R. § 71.11 and Subpart IV of the NNOPR.

NNEPA will prepare a proposed permit that incorporates all changes, including any changes that result from EPA comments and the public comment period. NNEPA will submit to USEPA a copy of the proposed permit along with NNEPA's responses to all comments received on the draft permit and all necessary supporting information, pursuant to 40 C.F.R. § 71.11(j). USEPA will have 45 days from its receipt of the permit to review and object to the proposed permit in accordance with the procedures set forth at 40 C.F.R. § 71.10(g).

NNEPA will not issue a permit if the Regional Administrator or his/her designee objects in writing within 45 days of receipt of the proposed permit and all necessary supporting information. Pursuant to 40 C.F.R. § 71.10(g)(1) and (2), any USEPA objections will include a statement of the reasons for objections and a description of the terms and conditions that the permit must include responding to the objection. USEPA will provide a copy of the objection to the permit applicant. NNEPA will, within 90 days after the date of an objection, revise and submit to USEPA the proposed permit in response to the objection. If NNEPA fails to do so, USEPA will issue or deny the permit in accordance with the requirements of Part 71, as provided in 40 C.F.R. § 71.10(g)(3).

E. Permit Issuance Process

Within the first three months of the delegation, NNEPA will make administrative amendments to all existing Part 71 permits to reflect the change in permitting authority from USEPA to NNEPA. The administrative amendments also will include but are not limited to changes in annual fee submittals, changes in reporting requirements and a statement that Part 71 permits are enforceable by NNEPA as well as USEPA.

Since NNEPA will not issue new Part 71 permits but instead will revise the existing Part 71 permits, the terms of the existing Part 71 permits will remain unaffected. As each permit comes up for renewal, NNEPA will then issue a renewal permit for a new five-year term. The expiration dates for the existing Part 71 permits are listed in Table 3 below.

**Table 3.** Part 71 permit expiration dates

| <b>Seq.</b> | <b>Facility Name (Location)</b> | <b>Expiration Date</b> | <b>Status</b> |
|-------------|---------------------------------|------------------------|---------------|
|-------------|---------------------------------|------------------------|---------------|

|    |                                          |            |                       |
|----|------------------------------------------|------------|-----------------------|
| 1  | Transwestern Pipeline Klagatoh Sta (AZ)  | 04/24/2005 | Current               |
| 2  | Transwestern Pipeline Leupp Sta (AZ)     | 04/24/2005 | Current               |
| 3  | El Paso Natural Gas Navajo Sta (AZ)      | 05/11/2005 | Current               |
| 4  | El Paso Natural Gas Leupp Sta (AZ)       | 05/11/2005 | Current               |
| 5  | El Paso Natural Gas Dilkon Sta (AZ)      | 05/11/2005 | Current               |
| 6  | Conoco Wingate Fractionating Plant (NM)  | 12/21/2005 | Current               |
| 7  | El Paso Natural Gas Window Rock Sta (AZ) | 12/25/2005 | Current               |
| 8  | El Paso Natural Gas White Rock Sta (NM)  | 12/25/2005 | Current               |
| 9  | El Paso Natural Gas Gallup Sta (NM)      | 12/25/2005 | Current               |
| 10 | Navajo Generating Station (AZ)           | 06/04/2006 | Current               |
| 11 | Four Corners Power Plant (NM)            | 06/11/2006 | Current               |
| 12 | Peabody Western Coal (AZ)                | 09/22/2008 | Current               |
| 13 | ChevronTexaco Aneth Unit (UT)            | 00/00/2009 | Renewal by 09/01/2004 |
| 14 | ExxonMobil McElmo Creek Unit (UT)        | 00/00/2009 | Renewal by 09/01/2004 |

All new permits will be issued in the manner described in 40 C.F.R Part § 71.7 and in subpart IV of the Navajo Nation Operating Permit Rule and section 212 of the Navajo Uniform Rules, which are consistent with § 71.7. The Director will issue all new permits for a fixed term of five years, except that solid waste incineration units combusting municipal waste subject to the standards under CAA § 129(e), will be issued a permit for a period not to exceed 12 years.

#### F. Permit Fees

NNEPA will collect permit fees from all Part 71 sources subject to the delegated program. These fees will be collected pursuant to NNOPR Subpart VI, and are based on the “presumptive minimum” fee under the federal regulations. According to 40 CFR § 70.9(b)(2), the Administrator will presume that the fee structure is sufficient if the program requires the collection and retention of at least the presumptive minimum, or \$38.72 /ton per year of actual emissions (adjusted annually based on the Consumer Price Index), which is the amount required by the NNOPR. Moreover, a demonstration that the fees will be sufficient to cover the costs of the delegated program, as required by 40 C.F.R. § 71.9 and NNOPR § 602(C), is attached as Exhibit 1. The demonstration shows that the fees will cover both the direct and indirect costs of the Title V program, which include but are not limited to: regulation and guidance development, permit processing, administrative costs, enforcement, emissions and ambient monitoring, modeling, analyses or demonstrations, emissions inventory and tracking. These fees will be used solely for the Title V program costs. Therefore, since NNEPA has sufficient revenue authority to administer the delegated Part 71 program, USEPA will suspend collection of Part 71 fees, pursuant to 40 C.F.R. § 71.9(c)(2)(ii) and the Delegation Agreement.

Existing Part 71 sources will be required to pay an annual fee on the anniversary date of their Part 71 fee payment while new sources will be required to submit their fees within 60 days of commencing operation as a Part 71 source, pursuant to NNOPR §§ 603, 702. If USEPA delegates the Part 71 program to NNEPA by September 1, 2004, seven of the twelve existing Part 71 sources will be paying their fees to NNEPA on September 1, 2004, with the remainder paying on April 1, 2005 (see Table 2).

## G. Enforcement

All terms and conditions in a permit, including but not limited to provisions designed to limit a source's potential to emit, are enforceable by the Administrator pursuant to the CAA and by the Director pursuant to Subpart V of the Navajo Operating Permit Rule, Subpart 3 of the Navajo Uniform Rule, and Subchapter 3 of the Navajo Clean Air Act, 4 N.N.C. §§ 1151-56, as well as by persons pursuant to 4 N.N.C. § 1156 and § 304 of the Clean Air Act.

The EPA Administrator retains full federal enforcement authority under the CAA. Violations of any applicable requirement, any permit term or condition, any fee or filing requirement, any duty to allow or carry out inspection, entry, or monitoring activities, or any regulations or order issued by NNEPA pursuant to this Part 71 delegation agreement are violations of the Act pursuant to 40 C.F.R. § 71.12.

Pursuant to the enforcement authority enumerated in Subchapter 3 of the Navajo Nation Clean Air Act, the Director may:

- a. restrain or enjoin immediately and effectively any person by order or by suit in court from engaging in any activity in violation of a permit that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment;
- b. seek injunctive relief in tribal court to enjoin any violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;
- c. assess civil penalties or recover civil damages; and
- d. bring a criminal action in tribal court, under certain circumstances and for Indian defendants only.

Initially, however, NNEPA intends to work cooperatively with USEPA on any enforcement actions. By doing so, NNEPA expects to receive training and guidance and to develop expertise to prepare for enforcement under a Part 70 permit program. For example, NNEPA intends to inspect and conduct comprehensive compliance investigations in conjunction with USEPA of Part 71 facilities; such inspections and investigations will be performed in consistent with USEPA's Part 71 Compliance Monitoring Strategy policy. Facility inspections for all Part 71 facilities will be conducted annually and Compliance Monitoring will be done semiannually through facility reporting and certification. Inspections will be conducted by NAQCP Compliance department personnel and/or Monitoring specialists utilizing necessary equipment for testing the emission source and traveling in assigned department vehicles to the inspection sites. Any noncompliance enforcement action will be conducted pursuant to the enforcement authority enumerated in Subchapter 3 of the Navajo Nation Clean Air Act and by the terms identified in the Delegation Agreement utilizing internal Tribal Department of Justice and/or external counsel resources as required in conjunction with US EPA Region IX.

Pursuant to 40 C.F.R. § 49.8, USEPA will continue to exercise primary criminal enforcement responsibility. NNEPA, however, will provide potential investigative leads to USEPA, as agreed to by NNEPA and EPA in a Memorandum of Agreement to be worked out between the parties. The Memorandum of Agreement will outline how NNEPA, upon becoming aware of possible criminal activity regarding compliance with the Part 71 Program, will notify the EPA Criminal Investigation Division of such activity as soon as possible, but in all instances no later than 30 days after discovery of the activity.

H. Current/Future Operating Expenses

The expected cost of administering the Navajo Delegated Part 71 Permit Program during the first year of delegation, in terms of FY 2005 dollars, is \$419,839.55. The estimated program costs and funding sources are shown in the table below:

**Table 4.** Fiscal Budget

| Fiscal Year<br>(Oct. 1 - Sept. 30) | Funding Sources |              |                   | Program Expenses |              |
|------------------------------------|-----------------|--------------|-------------------|------------------|--------------|
|                                    | Sept. 1, Fee    | Apr. 1, Fee  | Total Permit Fees | Personnel        | Operating    |
|                                    | \$279,184.09    | \$140,655.46 | \$419,839.55      | \$219,082.00     | \$200,757.55 |

I. Permit Program Staff and Responsibilities

The following is a list of personnel, including their responsibilities, required to run the Navajo Delegated Part 71 Permit Program:

1. Environmental Department Manager
  - a. Assumes the supervisory responsibilities over permit program staff and overall administration of the Navajo Delegated Part 71 Operating Permit Program.
  - b. Provides guidance and develops strategies necessary to ensure the successful transition from a USEPA Part 71 Permit Program to a Navajo Delegated Part 71 Permit Program to an approved Navajo Part 70 Operating Permit Program.
  - c. Submit reports to USEPA Region 9 to meet the requirements of the Delegation Agreement and NNOPR.
  - d. Provides final approval of all draft permits in preparation for signature by the Executive Director.
  - e. Hires additional personnel for the permit program as needed.
2. Environmental Program Supervisor
  - a. Works closely and in cooperation with the Environmental Department Manager in running the permit program.
  - b. Provides assistance for the work on the primacy package.
  - c. Works closely with the technical staff on the daily operation of the

- permit program.
      - d. Develops the budget for the permit program.
      - e. Signs appropriate documents and correspondences pertaining to the regulated community.
- 3. Environmental Engineer
  - a. Responsible for the review, processing, drafting, and issuance of applicable permits.
  - b. Conducts notice and comment activities on draft permits.
  - c. Works closely with Environmental Program Supervisor and Inspector on issues related to permit conditions and/or provisions.
  - d. Provides assistance, as needed, on enforcement actions.
- 4. Environmental Specialist
  - a. Conducts periodic inspections of all facilities with title V permits subject to the authority of the Delegated Part 71 Permit Program.
  - b. Assembles, refers, and participates in cases for enforcement actions in cooperation with USEPA.
  - c. Submits reports (i.e., inspections, violations) of compliance and enforcement activities.
  - d. Observes source testing at facilities required to meet applicable standards (i.e., RATA, CEMs).
- 5. Information Technician
  - a. Assumes all the duties and responsibilities of a network administrator and related work.
  - b. Performs hardware repair and software program support.
  - c. Maintains and updates hardware and software equipment.
  - d. Orders equipment as necessary.
- 6. Office Specialist
  - a. Assumes all the secretarial and clerical duties associated with the permit program.
  - b. Works closely with the Environmental Program Supervisor (and staff) on administrative and personnel matters related to the permit program.
  - c. Assists the Environmental Engineer on activities related to notice-and-comment period for permits.

## **VI. Recruitment and Hiring of Permit Program Staff**

NNEPA will be advertising and plans to hire additional staff to complete its current and future needs to administer a delegated Part 71 permit program and, ultimately, a Part 70 operating permit program. The following outlines NAQCP's plans for accomplishing this task.

- A. Create Staff Positions for Permit Program

1. Establish positions for the permit program
  - a. Identify positions and number of personnel needed to administer the permit program.
  - b. Work with Navajo Nation Department of Personnel to create new job classifications for the permit program staff.

This portion of the plan has already been accomplished.
2. Recruitment
  - a. Announce positions through local university liaisons: Universities of New Mexico, Arizona, and Utah.
  - b. Announce positions through specific professional trade sites, e.g., ITEP, AISES, State Environmental Departments. Announcements will begin in July 2004.
  - c. Announce positions with the Navajo Nation Department of Personnel beginning on September 1, 2004.

This portion of the plan will continue until all the positions are filled.

**B. Selection of Staff**

1. The selection process will occur as soon as possible following the announcement of positions. Although the exact time will depend on when and the number of applicants referred to NNEPA, the selection of candidates should happen within four to six weeks after the vacancy announcements.
2. NNEPA will consider IPA personnel with USEPA or other governmental organizations when selecting permit program staff.

**VII. Orientation and Training**

**A. New Staff**

1. In accordance with the Navajo Nation Personnel Policy and Procedures, all new staff will undergo employee orientation and subject to a 90-day, probationary period.
2. Complete an additional administrative and personnel process.
3. Introduce new staff to NNEPA and receiving briefing on their roles and responsibilities within the permit program.

**B. Training**

1. Once the 90-day, probationary period has ended, new staff will have the opportunity to receive the training needed to support their respective roles in the permit program.